

120
No. 2481

United States
Circuit Court of Appeals
For the Ninth Circuit.

MARY L. GIBBONS,

Petitioner,

vs.

J. S. GOLDSMITH, as Trustee in Bankruptcy of the
Estate of PAT GIBBONS, Bankrupt,

Respondent.

In the Matter of PAT GIBBONS, Bankrupt.

**Petition for Revision and Transcript of
Record in Support Thereof**

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of Law,
a Certain Order of the United States District
Court for the Western District of Wash-
ington, Northern Division.

Filed

OCT 7 - 1914

E. D. Monckton

No. 2481

United States
Circuit Court of Appeals
For the Ninth Circuit.

MARY L. GIBBONS,

Petitioner,

VS.

J. S. GOLDSMITH, as Trustee in Bankruptcy of the
Estate of PAT GIBBONS, Bankrupt,

Respondent.

In the Matter of PAT GIBBONS, Bankrupt.

Petition for Revision and Transcript of
Record in Support Thereof

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of Law,
a Certain Order of the United States District
Court for the Western District of Wash-
ington, Northern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Answer	15
Certificate of Clerk U. S. District Court to Transcript of Record in Support of Peti- tion for Revision	30
EXHIBITS:	
Exhibit "A"—Petition for Order Requir- ing Parties to Propound Claims, etc...	7
Exhibit "B"—Objection to Jurisdiction and Motion to Quash, etc.	14
Exhibit "C"—Answer	15
Exhibit "C-2"—Reply of Trustee to An- swer of Mary L. Gibbons.....	20
Exhibit "D"—Order of Referee in Bank- ruptcy, etc.	21
Exhibit "E"—Opinion on Review of Order of Referee	23
Exhibit "F"—Order Confirming Order of Referee	29
Motion to Quash, Objection to Jurisdiction and.	14
Objection to Jurisdiction and Motion to Quash..	14
Opinion	23

Index.	Page
Order Confirming Referee's Decision In Re Possession of Community Property, etc.	29
Order of Referee in Bankruptcy	21
Order Requiring Parties to Appear Before Referee in Bankruptcy and to Show Cause, etc..	10
Order Supplementary to Order of June 24, 1914, Requiring Parties to Propound Claims, etc.	13
Petition for Order Requiring Parties to Propound Claims, etc.	7
Petition for Review	1
Reply of Trustee to Answer of Mary L. Gibbons.	20

*The United States Circuit Court of Appeals for the
Ninth Circuit.*

No. —.

In the Matter of PAT GIBBONS,

Bankrupt.

MARY L. GIBBONS,

Petitioner.

Petition for Review.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now Mary L. Gibbons, and respectfully petitions and shows the Court:

FIRST: That your petitioner is now and for more than twenty-nine years last past has been the wife of said Pat Gibbons, bankrupt.

SECOND: That on the 30th day of June, A. D. 1914, in King County, Washington, there was delivered to and served upon your petitioner a petition, order and supplemental order, requiring your petitioner to propound her claim, in proceedings pending in the District Court of the United States for the Western District of Washington, Northern Division, in Bankruptcy, in the matter of Pat Gibbons, Bankrupt No. 4853, a true copy of which petition, order and supplemental order, so delivered to and served upon your petitioner, is hereto attached marked Exhibit "A," and is by reference made a part of this petition.

THIRD: That prior to the service of said petition, order and supplemental order hereinbefore referred to, your petitioner was not a party to said bankruptcy

proceedings, had [1*] not voluntarily or otherwise appeared therein, and had taken no part therein.

FOURTH: That thereafter, on the 7th day of August, A. D. 1914, your petitioner duly filed with the Referee before whom said proceedings were then pending and served upon the attorneys for the trustee her special appearance and objections to the jurisdiction of the Court and of said Referee, and motion to quash a true copy of which said special appearance and objections to the jurisdiction of the Court and of said Referee is hereto attached, marked Exhibit "B" and is by reference made a part of this petition, and at the same time your petitioner preserving her special appearance and still objecting to the jurisdiction of the Court and of said Referee, duly served upon the attorneys for the trustee and filed with the Referee her answer to said petition, a true copy of which is hereto attached, marked Exhibit "C" and is hereby made a part of this petition.

FIFTH: That thereafter the trustee in said bankruptcy on the 7th day of August, 1914, served upon your petitioner and filed with the Referee, a reply to said answer, a true copy of which said reply is hereto attached marked Exhibit "C-2," and is by reference made a part of this petition.

SIXTH: That thereafter on the 31st day of July A. D. 1914, said Referee made and entered an order in said proceedings overruling your petitioner's objections and denying your petitioner's motion to quash, a true copy of which said order is hereto attached, marked Exhibit "D," and is by reference

*Page-number appearing at foot of page of original certified Record.

made a part of this petition.

SEVENTH: That thereafter on the — day of August, A. D. 1914, your petitioner filed her petition to have said order and decision of said Referee reviewed by the Honorable Judges of the United States District Court of the Western District of [2] Washington, Northern Division, and thereupon the said Referee duly certified said proceeding for review to the Honorable Judges of said Court.

EIGHTH: That thereafter on the 28th day of August, 1914, the Honorable Jeremiah Neterer, one of the Judges of said Court, rendered his opinion in writing sustaining the order theretofore made by said Referee, a true copy of which is hereto attached, marked Exhibit "E," and is made a part of this petition.

NINTH: That thereafter on the 3d day of September, A. D. 1914, an order was signed and entered by the Honorable Judge, Jeremiah Neterer, confirming the said order theretofore made by said Referee on July 31st, 1914, and ordering and directing the trustee in bankruptcy to proceed with the administration of said estate, a copy of which said order is hereto attached, marked Exhibit "F" and is by reference made a part of this petition.

TENTH: That no proof was taken in connection with the determination by said Referee or by the Honorable Jeremiah J. Neterer, and the entire proceedings upon which said orders were grounded appear in the exhibits attached hereto.

ELEVENTH: That all of the property attempted to be administered upon, described in the petition

served upon your petitioner, was acquired in the State of Washington by said Pat Gibbons and your petitioner by the joint labors and efforts of said Pat Gibbons and your petitioner since the date of the marriage of said Pat Gibbons and your petitioner, and is the community property of said Pat Gibbons and your petitioner, and your petitioner has a valid subsisting claim therein.

TWELFTH: Your petitioner charges the fact to be that the said District Court erred in overruling the objections of your petitioner to the jurisdiction of said Court and in denying your petitioner's motion to quash said order requiring your [3] petitioner to propound her claim, and erred in sustaining and confirming the said order of the Referee made on the 31st day of July, A. D. 1914, and erred in ordering and directing said Seattle National Bank to turn over to the trustee the sum of \$8,174.51, and erred in ordering and directing said trustee to proceed with the distribution of said sum of \$8,174.51, and the further sum of \$48,050, received by the Trustee from an attempted sale of the section of coal land situate in King County, Washington, owned by said Pat Gibbons, bankrupt, and your petitioner as their community property; and your petitioner is aggrieved thereby, and therefore not waiving any rights, she prays this Honorable Court to review and revise the decision of the Court below.

THIRTEENTH: Your petitioner further charges that rights of your petitioner in and to said section of coal land attempted to be sold by said trustee for which he claims to have received said sum of \$48,-

050, or the rights of your petitioner in and to said sum of \$48,050, or the rights of your petitioner in and to the said sum of \$8,174.51, now on deposit in the Seattle National Bank of Seattle, Washington, derived from the leasing of said coal land, cannot be adjudicated or determined in this summary proceeding and can only be adjudicated and determined in a plenary suit to be brought for that purpose by the trustee in the Superior Court of the State of Washington, for King County, which is the only court having jurisdiction to hear and determine the rights of your petitioner in and to said funds and said coal lands.

FOURTEENTH: Your petitioner further charges that under the laws of the State of Washington, where all of said property was acquired and is situate, the community property acquired by a husband and wife cannot be taken by execution or otherwise, to [4] satisfy the debts of the husband, and that under the laws of said State of Washington the husband cannot sell, mortgage or dispose of the real property belonging to the community without the wife in the mortgage or conveyance.

FIFTEENTH: Your petitioner further charges she has not consented to the proceedings or any of them; that she has not consented to or joined in the attempted sale of said section of coal land; that she has at all times objected to the jurisdiction of the Court and the attempt to adjudicate and dispose of her interests in said funds and said coal land in this summary proceeding.

Your petitioner therefore prays that a Writ of

Review issue herein and that such order of the District Court be set aside and held for naught; that said order of said Referee be vacated, set aside and held for naught, and that it be adjudged and decreed that the District Court has no jurisdiction over the said \$8,174.51, now in the possession of the Seattle National Bank; no jurisdiction, right or authority over the said sum of \$48,050, claimed to have been realized from the attempted sale of said section of coal lands, and no jurisdiction to sell or dispose of said coal lands, and no jurisdiction to adjudge or determine in this summary proceeding the rights, claims or interest of your petitioner in or to any of said funds or lands, and that your petitioner be given such other and further relief as shall be proper.

WALTER S. FULTON,
ARTHUR E. GRIFFIN and
G. C. ISRAEL,
Attorneys for Petitioner. [5]

State of Washington,
County of King,—ss.

Mary L. Gibbons, the petitioner in the foregoing petition, does hereby make solemn oath that the statements contained therein are true, according to the best of her knowledge, information and belief.

MARY L. GIBBONS.

Subscribed and sworn to before me this 9th day of September, A. D. 1914.

[Seal]

G. C. ISRAEL,
Notary Public in and for the State of Washington,
Residing at Seattle. [6]

**Exhibit "A"—Petition for Order Requiring Parties
to Propound Claims, etc.**

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN BANKRUPTCY—No. 4853.

In the Matter of PAT GIBBONS,

Bankrupt.

**PETITION FOR ORDER REQUIRING PARTIES
TO PROPOUND CLAIMS, ETC.**

To the Honorable Judges of the Above-entitled
Court:

Comes now J. S. Goldsmith, trustee in bankruptcy
herein, and respectfully reports to the Court as fol-
lows:

1. That on the — day of June, 1914, there came
into the hands of your petitioner \$48,050 cash, being
the sum realized by your petitioner on the sale of
real property to the Dexter Horton Trust & Savings
Bank, as per order of Court heretofore entered
herein; and said sum ever since has been and now
is in the possession and under the control of your
petitioner as trustee.

2. That at the time of the entry of adjudication
of bankruptcy herein the above-named Pat Gibbons
was the owner of a certain coal mining property
located in King County, Washington, and more par-
ticularly described as Section 16, Township 21 North,
Range 7 East, W. M., containing six hundred and
forty acres, more or less, being the property known

as the Occidental Coal Mine, which property came into the possession and control of your petitioner as trustee and remained in his possession and control, subject to the lease hereinafter mentioned, until sold by order of this Court, as shown by the record and files herein.

3. That prior to the filing of the petition for adjudication of bankruptcy herein, the said coal mining [7] property had been leased to F. H. Ketcham, said lease running for twenty-five years, from November 30, 1910, with option in the lessee to renew the said lease for twenty-five years additional, a copy of which lease is annexed to the inventory herein; that by the terms of said lease the said lessee was required to pay certain rentals to be computed and determined by the amount of coal and kindred products taken from said mine, and in any event a minimum rental of \$2,500.00 per annum to be paid in quarterly installments.

4. That your petitioner upon qualifying as trustee was undetermined whether to recognize the validity of said lease, and, in order that your petitioner might not be estopped from questioning the validity of said lease, your petitioner refused to accept any payments of rent tendered by said lessee; that said lessee, the said F. H. Ketcham, his heirs and assigns, thereupon from time to time paid to the Seattle National Bank, of Seattle, Washington, for the account of your petitioner, various sums of money which said lessee, his heirs and assigns, admitted to be due as rent under the terms of the lease hereinbefore referred to, which sums of money, at the time

of the sale and transfer of said coal mining property, as per order of this Court heretofore entered, amounted to at least \$8,174.51; that said sum still remains in the possession and control of said Seattle National Bank.

5. That your petitioner has determined to accept the sum of \$8,174.51, now in the hands of said Seattle National Bank, as aforesaid, but that said bank refuses to pay over said sum to your petitioner, and alleges as ground for so refusing, that one Mary L. Gibbons, the wife of said Pat [8] Gibbons, the bankrupt herein, asserts some right, title, claim or interest in said fund.

6. Your petitioner is advised and believes the fact to be that said Mary L. Gibbons has no right, title, claim or interest in and to the fund of \$48,050 hereinabove mentioned, derived from the sale of said property, now in the possession and control of your petitioner, and that said Mary L. Gibbons has no right, title, claim or interest in and to the funds now in the hands of the said Seattle National Bank as aforesaid; that nevertheless your petitioner believes it advisable that some final determination be made by this Court establishing the rights of said Mary L. Gibbons in said moneys, if any she has.

WHEREFORE, your petitioner prays that an order be entered herein requiring the said Seattle National Bank to appear at a time and place to be specified therein and show cause why it should not be ordered to pay to your petitioner, as trustee in bankruptcy herein, the sum of \$8,174.51, coming into its possession and control as hereinabove mentioned

and described, and further requiring said Mary L. Gibbons to appear at the same time and place and assert and propound to the referee any right, title, claim or interest, which she has or claims to have in the moneys now in the possession and control of your petitioner, as trustee herein, and in the said sum of \$8,174.51, now in the possession and control of said Seattle National Bank; and further providing that if the said Mary L. Gibbons fails to so assert and propound, that she be barred of any and all right, title, claim or interest in and to said moneys now in the hands of your petitioner as trustee, and in and to said fund on deposit in said Seattle National Bank.

J. S. GOLDSMITH,
Trustee. [9]

United States of America,
Western District of Washington,—ss.

J. S. Goldsmith, being first duly sworn, on oath says: That he is the trustee named in the foregoing petition; that he has read said petition, knows the contents thereof and believes the same to be true.

J. S. GOLDSMITH.

Subscribed and sworn to before me this 24th day of June, 1914.

[Seal] ELKAN MORGANSTIEN,
Notary Public in and for the State of Washington,
Residing at Seattle.

**Order [Requiring Parties to Appear Before Referee
in Bankruptcy and to Show Cause, etc.].**

This cause coming on to be heard on the foregoing petition of the trustee:

IT IS ORDERED that said Seattle National Bank be and it is hereby required to appear before the undersigned referee in bankruptcy, at his office in Room No. 445, Henry Building, in Seattle, in said district, on the 1st day of July, 1914, at the hour of two o'clock P. M., and then and there show cause why it should not be required to forthwith pay over to J. S. Goldsmith, trustee in bankruptcy herein, the sum of \$8,174.51 cash, now in its possession and control, and coming into its hands in the manner described in the foregoing petition.

AND IT IS FURTHER ORDERED that Mary L. Gibbons, the wife of Pat Gibbons, the bankrupt herein, be and she is hereby required to appear before the undersigned referee in bankruptcy, [10] at his office in Room No. 445, in the Henry Building, in Seattle, in said district, on the 1st day of July, 1914, at the hour of two o'clock P. M., and then and there assert and propound to the undersigned referee in bankruptcy any right, title, claim or interest which she has or claims to have in and to the moneys mentioned and described in the foregoing petition and which are now in the possession and control of said trustee, and in and to the fund mentioned and described in the foregoing petition as being in the possession and control of said Seattle National Bank, and that upon failure so to do that the said Mary L. Gibbons be barred of all right, title, claim or interest in and to said moneys now in the hands of said trustee and in and to said fund now in the possession and control of said Seattle National Bank.

AND IT IS FURTHER ORDERED that service of this petition and order be made by delivery of a certified copy thereof to said Seattle National Bank, and to said Mary L. Gibbons, by any person who is a citizen of the State of Washington above the age of twenty-one years and not interested in this proceeding, or by the United States Marshal for the Western District of Washington, Northern Division.

Entered in open court this 24th day of June, 1914, at Seattle, Washington.

JEREMIAH NETERER,

Judge.

I hereby certify that the above and foregoing petition and order is a true copy of the original petition and order on file in my office.

[Seal of the United States District Court, Western District of Washington.]

FRANK L. CROSBY,

Clerk.

By B. E. Simpkins,

Deputy.

[Endorsed]: Petition for order requiring parties to propound claims, etc., and order to show cause thereon. Filed in the U. S. Dist. Court, Western Dist. of Wash. June 24, 1914. Frank L. Crosby, Clerk. B. E. S., Deputy. [11]

*In the District Court of the United States, Western
District of Washington, Northern Division.*

No. 4853.

In the Matter of PAT GIBBONS,

Bankrupt.

**Order Supplementary to Order of June 24, 1914,
Requiring Parties to Propound Claims, etc.**

An order having been entered in the above-entitled proceeding on the 24th June, 1914, signed by the undersigned District Judge, directing the appearance of the Seattle National Bank and Mary L. Gibbons on the first July, 1914, to answer the petition of J. S. Goldsmith, trustee in bankruptcy herein, and, whereas said order inadvertently read said parties should appear "before the undersigned referee in bankruptcy at his office in Room No. 445, in the Henry Building, in Seattle, in said district, etc.,"

NOW, THEREFORE, SAID ORDER IS HEREBY SUPPLEMENTED AND AMENDED so as to require the appearance and return of said parties, and each and both of them, before the Honorable John P. Hoyt, Referee in Bankruptcy, at his office in Room No. 445, in the Henry Building, in Seattle, in said District, on the first day of July, 1914, at the hour of two o'clock P. M., and,

IT IS HEREBY FURTHER ORDERED AND DIRECTED that service of this supplementary order be made by delivery of a certified copy hereof to the said Seattle National Bank and to the said Mary L. Gibbons by the United States Marshal for

the Western District of Washington, Northern Division.

Entered in open court this 27th day of June, 1914,
at Seattle, Wash.

JEREMIAH NETERER,

District Judge.

I hereby certify that the foregoing is a true, correct and complete copy of order supplementary to order of June 24, 1914, requiring parties to propound claims, etc., in the above-entitled matter, as same appears on file in my office.

Dated this 27th day of June, 1914.

[Seal of the United States District Court, Western
District of Washington.]

FRANK L. CROSBY,

Clerk U. S. District Court.

By B. E. Simpkins,

Deputy. [12]

[Endorsed]: Order Supplementary to Order of June 24, 1914, Requiring Parties to Propound Claims, etc. Filed in the United States District Court, Western District of Washington. Jun. 27, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [13]

**Exhibit "B"—Objection to Jurisdiction and Motion
to Quash, etc.**

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN BANKRUPTCY—No. 4853.

In the Matter of PAT GIBBONS,

Bankrupt.

OBJECTION TO JURISDICTION AND
MOTION TO QUASH.

Comes now Mary L. Gibbons, respondent herein, and specially appearing for the purpose of this objection, and motion, and for no other purpose, objects to the jurisdiction of the Court to hear and determine this matter, and move that the citation heretofore issued and served upon the respondent be quashed, set aside and held for naught because of the lack of jurisdiction on the part of the Court to hear and determine this matter in so far as the property interests and rights of this respondent are concerned.

This objection and motion is based upon the files and records herein.

WALTER S. FULTON and
ARTHUR E. GRIFFIN,

Attorneys for Respondent Mary L. Gibbons Appearing Specially.

[Endorsed]: Filed in the U. S. Dist. Court, Western Dist. of Wash. Aug. 7, 1914. Frank L. Crosby, Clerk. [14]

Exhibit "C"—Answer.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN BANKRUPTCY—No. 4853.

In the Matter of PAT GIBBONS,

Bankrupt.

ANSWER.

Comes now Mary L. Gibbons, respondent herein,

and not waiving the special appearance heretofore entered by her herein, still insisting upon said appearance and the objection and motion interposed in connection therewith, and now refusing to consent to this matter being heard and determined by the Court herein, and objecting to its hearing and determination by this Court, for answer to the petition filed herein and upon which a citation was issued directed to this respondent, says:

I.

Answering paragraph one of the petition, respondent denies any knowledge or information sufficient to form a belief as to the allegations therein contained.

II.

Answering paragraph two of the petition, respondent denies each and every allegation therein contained.

III.

Answering paragraph three of the petition, respondent admits that the lease therein referred to was executed and delivered as therein stated. [15]

IV.

Answering paragraph four of said petition, respondent denies any knowledge or information sufficient to form a belief as to the allegations therein contained, except that respondent admits that the sum of \$8,174.51 is in the possession and control of the Seattle National Bank, and admits that said sum was paid in to the Seattle National Bank from time to time by the said F. H. Ketcham, his heirs and assigns.

V.

Answering paragraph five of said petition, respondent admits the allegations therein contained.

VI.

Answering paragraph six of said petition, respondent denies each and every allegation therein contained.

And by way of a further defense and answer to said petition, respondent alleges: .

I.

That this respondent and Pat Gibbons, bankrupt, intermarried approximately thirty years ago, and ever since said time have been and now are husband and wife.

II.

That any and all property acquired by either the respondent or her said husband, Pat Gibbons, during said marital relation was acquired through their joint efforts, and was and is the community property of respondent and her said husband, and including Section Sixteen (16) Township, Twenty-one (21) [16] North, Range Seven (7) East, Willamette Meridian, containing 640 acres, being the property known as the Occidental Coal Mine, and described in the petition herein.

III.

That all of the money referred to in the fifth paragraph of the petition filed herein, viz.: the sum of \$8,174.51, now held by and in the possession of the Seattle National Bank of Seattle, Washington, is money derived from the rental of said coal land hereinbefore described, known as the Occidental Coal

Mine, and was the community property of this respondent and of Pat Gibbons, her husband.

IV.

That long before any attempted sale of said Section 16, Township 21 North, Range 7 East, W. M., was made, or attempted, this respondent duly and regularly filed in the office of the County Auditor of King County, Washington, a claim in all respects made and verified as required by law, asserting and claiming her community title and interest in and to said property, and that the trustee in bankruptcy has at all times since, long before the attempted sale, had full notice of the rights and claim of this respondent, and that said property was and is the community property of this respondent, and her said husband, Pat Gibbons.

V.

That substantially the entire indebtedness alleged to be owing by the bankrupt Pat Gibbons, and substantially [17] all of the claims filed against said bankrupt Pat Gibbons are the separate indebtedness of said Pat Gibbons, and not an indebtedness against the community consisting of Pat Gibbons and this respondent, Mary L. Gibbons, his wife; that the claim filed and asserted herein against said Pat Gibbons of the Dexter Horton Trust & Savings Bank is the separate indebtedness of said Pat Gibbons, and was incurred by him while living in the District of Alaska, separate and apart from this respondent, Mary L. Gibbons, excepting of \$30,000.00 of said claim of said Dexter Horton Trust & Savings Bank, which said amount is the indebtedness of N. H. Latimer and

C. E. Burnside, and is not, and never has been, the indebtedness of said Pat Gibbons, or the indebtedness of the community.

WHEREFORE, the respondent prays that these proceedings be quashed, and that she go hence and be allowed her costs and disbursements.

WALTER S. FULTON and

ARTHUR E. GRIFFIN,

Attorneys for Said Respondent Mary L. Gibbons.

[18]

State of Washington,

County of King,—ss.

Mary L. Gibbons, being first duly sworn, on oath says: That she is the respondent in the above-entitled action; that she has read the foregoing answer, knows the contents thereof, and that the same is true.

MARY L. GIBBONS.

Subscribed and sworn to before me this 8th day of July, A. D. 1914.

ARTHUR E. GRIFFIN,

Notary Public in and for the State of Washington,

Residing at Seattle.

[Endorsed]: Answer. Filed July 10, 1914, 2 P. M. John P. Hoyt, Referee. Filed in the United States District Court, Western Dist. of Washington. Aug. 7, 1914. Frank L. Crosby, Clerk. [19]

**Exhibit "C-2"—Reply of Trustee to Answer of
Mary L. Gibbons.**

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN BANKRUPTCY—No. 4853.

In the Matter of PAT GIBBONS,

Bankrupt.

**REPLY OF TRUSTEE TO ANSWER OF MARY
L. GIBBONS.**

Comes now J. S. Goldsmith, trustee herein, and replying to the further defense and answer of Mary L. Gibbons as set forth and alleged in her answer to the petition of the trustee herein says:

I.

Answering paragraph V of said answer, the trustee denies each and every allegation therein contained, and on information and belief alleges that all of the claims proved and allowed in this bankruptcy proceedings were and are the community indebtedness of the said Pat Gibbons and Mary L. Gibbons, his wife.

McCLURE & McCLURE,

Attorneys for Trustee.

State of Washington,
County of King,—ss.

J. S. Goldsmith, being first duly sworn, on oath says: That he is the trustee named in the foregoing

reply; that he has read said reply, knows the contents thereof and believes the same to be true.

[Seal]

J. S. GOLDSMITH.

Subscribed and sworn to before me this 13 day of July, 1914.

ELKAN MORGENSTERN,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed in the U. S. Dist. Court. Aug.
7, 1914. Frank L. Crosby, Clerk. [20]

Exhibit "D" [Order of Referee in Bankruptcy, etc.].

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN BANKRUPTCY—No. 4853.

In the Matter of PAT GIBBONS,

Bankrupt.

This cause heretofore came duly and regularly on for hearing on the petition of J. S. Goldsmith, as trustee in bankruptcy of the above-named bankrupt, that Mary L. Gibbons, wife of the bankrupt, propound her claims to the moneys in the possession of the trustee and to the additional moneys in the possession of the Seattle National Bank, and that said Seattle National Bank pay to the trustee the moneys in its possession, and the answer of said Mary L. Gibbons to said petition, and the trustee's reply to said answer, the trustee and the said Mary L. Gibbons appearing by their respective attorneys,

and it appearing from the facts disclosed by the pleadings that the funds to which this controversy relates are all the proceeds of property belonging to the community composed of the bankrupt and his wife, Mary L. Gibbons, and that some, if not all, of the claims proved and allowed herein are the community debts of the bankrupt and his said wife, and that the question at this time presented for the decision of the undersigned Referee is whether the bankruptcy proceedings against the above-named bankrupt brings in to the possession of the Court the estate of the community composed of the bankrupt and his wife, and whether accordingly said trustee is entitled to the possession of the moneys above mentioned; and said matter having been duly argued and submitted, and the [21] undersigned Referee having heretofore filed herein his memorandum decision in writing;

IT IS ORDERED:

1. That the trustee is entitled to the sole possession and control of all community property of the above named bankrupt and his wife, Mary L. Gibbons, or the funds derived therefrom, including the moneys now in the possession of the trustee arising from the sale of that certain coal mining property located in King County, Washington, and more particularly described as Section 16, Township 21 North, Range 7 East, W. M., containing six hundred and forty acres, more or less, being the property known as the Occidental Coal Mine, and to the additional moneys in the possession of the Seattle National Bank received by said bank from F. H.

Ketcham on account of that certain lease mentioned in the trustee's petition herein, and all of said funds are subject to administration and distribution herein in such manner as this Court may hereafter direct.

2. That the matter of the administration and distribution of said funds be, and the same is, hereby set for hearing before Cicero R. Hawkins, Referee, at his office at Seattle, in said district, at the hour of two o'clock P. M., August 13, 1914, at which time and place the said Mary L. Gibbons shall appear and propound her claim, if any she has, in and to the said moneys in the possession of the trustee and in the possession of the said Seattle National Bank.

Dated at Seattle, in said district, this 31st day of July, 1914.

JOHN P. HOYT,
Referee.

[Endorsed]: Filed in the United States Dist. Court, Western Dist. of Washington, Aug. 7, 1914. Frank L. Crosby, Clerk. [22]

Exhibit "E" [Opinion on Review of Order of Referee].

*United States District Court, Western District of
Washington, Northern Division.*

No. 4853.

In the Matter of PAT GIBBONS,

Bankrupt.

Filed August 28, 1914.

ON PETITION TO REVIEW ORDER OF
REFEREE — ORDER OF REFEREE
CONFIRMED.

Pat Gibbons, a married man, was adjudged a bankrupt. Among the assets scheduled is 640 acres of coal land, known as Occidental Coal Mine. This land had been leased for a long term of years on a royalty basis, with a minimum rental of \$2,500 per annum, payable quarterly. This property came into the possession of the trustee, subject to the lease. The lessee paid, from time to time, to the Seattle National Bank, for the trustee, rent, under the terms of the lease, \$8,174.51. In due course said land was sold by the trustee for the sum of \$48,050, cash paid to the trustee. On June 24, 1914, a petition was filed by the trustee praying that the Seattle National Bank show cause why it should not be required to pay to the trustee said \$8,174.51; also that Mary L. Gibbons, wife of the bankrupt, be required to appear and assert and propound any claim, interest or right she may have to any of the money. At the time appointed under the rule, Mary L. Gibbons appeared specially and objected to the jurisdiction of the Court, and moved that the rule be set aside in so far as her property interest or rights were concerned. The Referee before whom the matter was returnable denied the exception and overruled the motion, and thereupon she filed her answer, still reserving her right under the exception and motion, in which she alleges, in substance, that the land is community property under the laws of Washington; that the

money in issue was derived from the lease and sale of the land and was community property; that long before the sale of the land she filed in [23] the County Auditor's office of King County in which the land is situated, her declaration and claim of community interest in the land as provided by the laws of Washington. That the trustee in bankruptcy, long before the sale of the land, had notice of her claim and rights. That *substantially all of the claims filed against the estate of the bankrupt* are his separate indebtedness and not indebtedness of the community. That it was created by the bankrupt while living in Alaska, separate and apart from the wife, except \$30,000, which is indebtedness of others than the bankrupt or the community referred to.

The Referee held that the trustee was entitled to the possession of the community property, and that, in the distribution of the fund, only community claims can be paid out of the community property, and this Court should determine the right and status of these several claims and pay them where the right appears. A petition to review this order of the Referee is now before the Court.

WALTER S. FULTON,

ARTHUR E. GRIFFIN,

For Petitioner.

McCLURE & McCLURE,

For Trustee.

CLISE & POE,

For Dexter Horton Trust & Savings Bank.

NETERER, District Judge (after stating the facts as above):

It being admitted by the answer of Mary L. Gibbons that a portion of the indebtedness filed against the bankrupt's estate is community indebtedness, the issue to be determined is whether the community property, under the laws of Washington, passed to the trustee in bankruptcy for the purpose of paying the community indebtedness. The rights of the husband and wife with relation to property are created by the laws of Washington, and the court is governed by the laws of Washington and the interpretation placed thereon by the Supreme Court of that State. [24] The laws of Washington provide that all property acquired after marriage, except such as may be acquired by gift, devise or descent, is community property. Section 5918, Rem. & Bal. Code of Washington, provides:

“The husband has the management and control of the community real property—All such community real property shall be subject—to liens of judgments recovered for community debts and to sale on execution issued thereon.”

Section 70 of the Bankruptcy Act provides that the Trustee, upon his appointment and qualification, shall be vested by operation of law with the title of the bankrupt which prior to the filing of the petition could have been “sold under judicial process against him”—Act of Congress, June 25, 1910, 36 Stat. at Large, 838, Collier on Bankruptcy, 1914, page 987.

Section 47 of the same act, provides that the trustee shall be vested “with all the rights, remedies and

powers of the creditor holding a lien by legal or equitable proceeding thereon—and powers of a judgment creditor holding an execution duly returned unsatisfied.” Act of Congress, *supra*, Collier on Bankruptcy, 1914, page 650.

The Supreme Court of Washington has uniformly held that an execution issued on a judgment obtained against the husband for a community debt may be levied upon community real property. *Curry vs. Catlin*, 9 Wash. 495; *Horton vs. Donaghue-Kelly Banking Co.*, 15 Wash. 399; *Allen vs. Chambers*, 18 Wash. 341. In *Thygesen vs. Neufelder*, 9 Wash. 455, the Washington Supreme Court held that an assignment by a husband of all of his property for the benefit of his creditors, under the laws of Washington, operated as a transfer of community real and personal property to the assignee in trust for the payment of the community debts. [25]

When the purpose of the Bankruptcy Act is considered as the vehicle by which all of the insolvent's property may be applied to the payment of the indebtedness and the relation of the provisions of Sections 47 and 70, *supra*, of the Act with the provisions of Section 5918, Rem. & Bal. Code, *supra*, and the holdings of the Supreme Court of Washington, *supra*, together with the admission in the answer that some of the indebtedness is community indebtedness, the conclusion is inevitable that the trustee is rightfully in possession of the community property, and the property being in the custody of the Court, it is the duty of the Court to determine the rank and right of the several claims to the fund, including the com-

munity claim, and to distribute it in accordance with the right as it may be found. The contention of the wife, therefore, that she has an adverse interest which the Court cannot dispose of in this summary way and without according to her the right of a plenary action, is not well founded. *Porter vs. Lazear*, 109 U. S. 84, cited by counsel for the wife, I think, is readily distinguished, in this, that by the provisions of the Act which creates the community estate, it is provided that the community real property shall be subjected to the payment of community debts and to sale on execution issued upon judgments obtained. The community right of the wife being a creature of the statute, is by the same statute, subjected to the community obligations; and while the Supreme Court of Pennsylvania held that the dower right of the wife could be sold under execution, there is no provision of the statute of Pennsylvania subjecting the dower interest of the wife to any indebtedness; nor is there a provision in the Bankruptcy laws of 1867, 14 Stat. at Large, page 517, under which that decision was rendered, vesting the trustee with the rights, remedies and powers of a judgment creditor holding an unsatisfied execution, and rights as contained in the provision of the act of June, 1910, *supra*.

The order of the Referee is confirmed.

JEREMIAH NETERER,

Judge. [26]

[Endorsed]: Filed in the United States District Court, Western District of Washington. Aug. 28, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [27]

Exhibit "F" [Order Confirming Order of Referee].

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN BANKRUPTCY—No. 4853.

In the Matter of PAT GIBBONS,

Bankrupt.

**ORDER CONFIRMING REFEREE'S DECI-
SION IN RE POSSESSION OF COMMU-
NITY PROPERTY, ETC.**

This cause heretofore came duly and regularly on for hearing on review of the decision and order of John P. Hoyt, Referee, dated July 31, 1914, in the matter of the issues made upon the petition of J. S. Goldsmith, as trustee in bankruptcy of the above-named bankrupt, that Mary L. Gibbons, wife of the bankrupt, propound her claim to the moneys in the possession of the trustee (the said moneys being the proceeds of the sale by the trustee of that certain real property described as Section 16, Township 21 North, Range 7 East, W. M., containing six hundred and forty acres, more or less, being the property known as the Occidental Coal Mine, situated in King County, Washington, and duly conveyed by the trustee to the Dexter Horton Trust & Savings Bank), and to the additional moneys in the possession of the Seattle National Bank, and that said Seattle National Bank pay to the trustee the moneys in its possession, the trustee and the said Mary L. Gibbons, and the said Dexter Horton Trust & Savings Bank,

appearing by their respective attorneys, and said matter having been duly argued and submitted to the Court, and the Court having heretofore made and caused to be filed herein his decision that the order of the Referee should be confirmed;

IT IS ORDERED: [28]

That the said order of the Referee of July 31, 1914, be, and the same is, hereby confirmed and approved in all respects, and that the administration of said cause proceed as in said order directed.

Dated at Seattle, in said district, this 3d day of September, 1914.

JEREMIAH NETERER,

Judge.

[Endorsed]: Filed in the U. S. District Court, Western Dist. of Washington. Sep. 3, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy.
[29]

[Certificate of Clerk U. S. District Court to Transcript of Record in Support of Petition for Revision.]

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify that I have compared the foregoing copies with the originals thereof in the foregoing entitled cause, now on file and of record in my office at Seattle, and that the same are true and perfect transcripts of said originals and of the whole thereof, with the exception of Marshal's re-

turns and acceptances of service.

Witness my hand and the seal of said Court, this
9th day of September, 1914.

• [Seal]

FRANK L. CROSBY,

Clerk.

By B. E. Simpkins,

Deputy. [30]

[Endorsed]: No. 2481. United States Circuit Court of Appeals for the Ninth Circuit. Mary L. Gibbons, Petitioner, vs. J. S. Goldsmith, as Trustee in Bankruptcy of the Estate of Pat Gibbons, Bankrupt, Respondent. In the Matter of Pat Gibbons, Bankrupt. Petition for Revision and Transcript of Record in Support Thereof Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Western District of Washington, Northern Division.

Received and filed September 14, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

